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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Limitations On Commercial Time On )  
Television Broadcast Stations )  
 )  
 )

MM Docket No. 93-254

To: The Commission

COMMENTS Of  
Center for the Study of Commercialism,  
Center for Media Education,  
Consumer Federation of America, and

Office of Communication of the United Church of Christ

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## SUMMARY

The Center for the Study of Commercialism, the Center for Media Education, the Consumer Federation of America, and the Office of Communication of the United Church of Christ, by their attorneys, Citizens Communications Center Project and Media Access Project, ask the Commission to 1) conduct a study of commercial practices on broadcast television; 2) require broadcasters to maintain and make available to the public records necessary for determining the amount of all types of commercial matter broadcast on their stations; 3) update the sponsorship identification rules with regard to infomercials and product placements to require meaningful public disclosure; and 4) revise its definition of program length commercials directed at children.

When the Commission abolished the commercial limits for broadcast television stations in 1984, it opened the floodgates to the excess of commercial matter which is being broadcast today. The Commission's rationale for dropping the limits -- that market forces would set acceptable limits -- has not proven correct.

Instead, in the years since deregulation we have witnessed the growth of long-form commercial practices as home shopping and infomercials. Product placements in programs has become big business. Product-related programs for children, which were unheard of before the 1980s, have squeezed out other programming for children.

Broadcasters should be serving the public interest by airing material which helps create an informed electorate, presents a diversity of perspectives, responds to the needs of the local community, and educates children. The excessive amount of commercial material which is currently being broadcast takes away time which could be spent on these important goals.

Some of the new forms of advertising, such as infomercials that mimic news or talk shows, and product placements, are deceptive to viewers. Because there is insufficient disclosure, viewers do not know that they are being persuaded and by whom. Excessive commercialism directed at children, particularly programs disguised as entertainment that promote toys or other children's products, is also deceptive and harms children.

Excessive commercialism creates an interest in consuming that may be at odds with broader goals for society. Moreover, the increase in commercial material gives advertisers more power over the content of other programming that is broadcast.

The public interest requires that the FCC examine the effects of its 1984 decision to repeal commercial limits for television stations and to re-establish limits and other rules as necessary to protect the viewing public from these harms.

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**COMMENTS**

The Center for the Study of Commercialism, the Center for Media Education, the Consumer Federation of America, and the Office of Communication of the United Church of Christ ("CSC et al."), by their attorneys, Citizens Communications Center Project and Media Access Project, respectfully submit these comments in response to the Notice of Inquiry, MM Docket No. 93-254 (NOI) issued in the above captioned proceeding.<sup>1</sup> The NOI seeks comment

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<sup>1</sup>The Center for the Study of Commercialism (CSC) is a non-profit corporation founded in 1990 devoted to researching, documenting and publicizing instances of excessive intrusion of commercial interests into the lives of the nation's citizenry. CSC is a membership organization based in Washington, D.C.

The Center for Media Education (CME) is a public interest policy and research organization established to promote the democratic potential of the electronic media.

The Consumer Federation of America (CFA) is a confederation of over 200 consumer organizations that represents consumer interests before the U.S. Congress, federal regulatory agencies, and the courts.

The Office of Communication (OC/UCC) is an instrumentality of the United Church of Christ, a Protestant denomination of 1.65 million members nationwide.

In the past several years, each of these organizations and/or their members have filed petitions asking the FCC to address specific problems related to commercial programming on television. In January 1989, OC/UCC along with Action for Children's Television asked the FCC to determine whether the placement of various products such as Coke machines in television shows without disclosure violated FCC requirements. Petition to Institute Notice of Inquiry Concerning Sponsorship Identifications for Product Placements (filed Jan. 19, 1989) (OC/UCC Petition). In March 1989, Center for Science in the

on whether the public interest would be served by the Commission limiting the amount of commercial matter broadcast on the television airwaves.

CSC et al. assert that there is currently an excessive and harmful amount of commercial matter being broadcast, and this excess is a direct result of the Commission's 1984 deregulation of commercial limits for television. The Commission has a duty to determine whether licensees are serving the public interest, and to act when licensees broadcast an excessive amount of advertising against this interest. Therefore, because the Commission has not examined the effects of its deregulation decision in the almost ten years since it was ordered, it must now do so.

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Public Interest, the National Council on Alcoholism, Doctors Ought to Care, Inc., Kathryn C. Montgomery, Ph.D., and Siva K. Balasubramanian, Ph.D. asked the FCC to apply the sponsorship identification rules to motion pictures rebroadcast on television stations in the same way these rules are applied to other broadcast programs. Petition To Amend The Television Sponsorship Identification Rules By Rescinding The Waiver Of Identification Requirements With Respect To Feature Motion Picture Films Produced Initially & Primarily For Theater Exhibition (filed Mar. 29, 1989) (Motion Picture Petition). In January 1992, CSC, CME, CFA and Telecommunications Research and Action Center asked that the Commission require continuous disclosure on infomercials that are designed to appear as regular programming. Petition For Declaratory Relief Regarding Sponsorship Identification Announcements For Infomercials Which Do Not Comply With The Requirements Of The Communications Act (Jan. 3, 1992) (Infomercial Petition). The Commission has not responded to any of these petitions.

On November 1, 1993, attorneys for many of the above-listed organizations wrote then-Chairman Quello requesting that the Commission include consideration of the Motion Picture Petition and the Infomercial Petition in Docket 93-254. Again, the Commission did not respond.

The infomercial industry does not appear worried that the Commission will take any action against excessive advertising. At the National Infomercial Conference in Las Vegas in October, the Regal Group's chairman and CEO Arthur Toll, said that "the FCC will do no more than pay 'lip service' to re-establishing limits on the amount of commercial matter broadcast by television stations."<sup>2</sup> We ask that the Commission prove Mr. Toll wrong and carry out its duty to protect the public from harmful excessive commercialism.

These comments explain how excessive commercial material disserves the public interest by replacing other types of programming, deceiving adult and child viewers, and undermining program integrity. CSC et al. then asks the Commission to 1) study the effects of the deregulation of commercial limits, examining the growth of such advertising methods as home shopping and infomercials; 2) decide what amount of advertising is compatible with the public interest and then impose limits so that licensees do not exceed that amount; 3) require broadcasters to maintain adequate records to monitor excessive airing of commercials; 4) update sponsorship identification rules to ensure adequate public disclosure in connection with newer forms of advertising; and 5) revise its definition of program length commercials targeted at children.

**I. An Excess Of Advertising And Commercial Matter Disserves The Public And Should Not Be Allowed On Broadcast Stations.**

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<sup>2</sup>Morrie Gelman, Growing Pains for the Infomercial Business, Broadcasting & Cable, Nov. 1, 1993, at 28.

It has been ten years since the Commission abolished the limits on commercial matter for television stations. At that time, the Commission did not deny its obligation to control excess commercials on broadcast stations. Rather, the Commission expressed its belief that market forces would keep advertising to an acceptable limit.<sup>3</sup> Now it is time for the Commission to examine whether market forces have worked to control excessive levels of commercial matter.<sup>4</sup>

Market forces have not controlled the amount of commercial matter broadcast. Instead, the level of commercial material on broadcast television has increased dramatically, and new methods of selling products have emerged and expanded rapidly in the wake of deregulation. The excess advertising, in its current forms, causes a number of harms, such as: 1) taking up broadcast space which could be better used to serve the public; 2) deceiving viewers; 3) encouraging viewers to be especially interested in acquiring material goods for themselves, to the detriment of other aspects of life and the general society; 4) increasing

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<sup>3</sup>Commercial TV Stations, 98 FCC 2d 1076, 1077, 1102-05 (1984), recons., 104 FCC 2d 358 (1986), rev'd in part, aff'd in part ACT v. FCC, 821 F.2d 741 (1987).

<sup>4</sup>Broadcast stations have traditionally been held to a higher standard in regard to their effect on the public, due to the fact that broadcasters receive their licenses for free, and are using a publicly owned resource. This policy was not changed, and was reaffirmed by Congress' decision not to auction spectrum for broadcast licenses. Omnibus Budget Reconciliation Act of 1993, adding new section 309(j) to the Communications Act; see also H.R. Rep. No. 111, 103d Cong., 1st Sess. 254 (May 25, 1993) (making clear that traditional over-the-air broadcast services would not be subject to competitive bidding).

advertiser involvement with program content, thus undermining the integrity of broadcast material; and 5) running program length commercials directed at children.

**A. Excessive Advertising Takes Time That Could Be Better Used To Serve The Public.**

It is a fundamental principle that the airwaves belong to the public and should be operated in the public interest, not the private interest of the licensees. The Commission and the Courts have long construed the public interest to require that broadcasters address the needs of all segments of the audience and contribute to the creation of an informed electorate by presenting programming that: 1) covers political candidates,<sup>5</sup> 2) discusses controversial issues,<sup>6</sup> 3) responds to the needs of local communities,<sup>7</sup> 4) reflects the perspectives of minority groups,<sup>8</sup> and 5) educates and informs children.<sup>9</sup> Indeed the Supreme Court has found that the public has a First Amendment right to "suitable access to social, political, esthetic, moral, and other ideas and experiences."<sup>10</sup>

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<sup>5</sup>CBS, Inc. v. FCC, 453 U.S. 367, 379 (1981); CBS, Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 117 (1973).

<sup>6</sup>Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

<sup>7</sup>Deregulation of Radio, 84 FCC 2d 968, 978 (1981), aff'd in part, rev'd in part, Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413 (1980); Television Deregulation, 98 FCC 2d at 1077.

<sup>8</sup>Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 566 (1990).

<sup>9</sup>Children's Television Act of 1990, 47 U.S.C. § 303a.

<sup>10</sup>Red Lion Broadcasting Co., supra note 8, at 390.

While CSC et al. recognize that some commercial matter is necessary to pay for programming, the amount of advertising currently on TV far exceeds the amount necessary to ensure the existence of programming in the public interest. Excessive advertising precludes other more valuable and beneficial types of programming. In some cases, advertising has reached a point where it does not support, but rather supplants programming.

**1. New Forms of Commercials Are Supplanting Programming.**

Home shopping provides one example of commercials replacing regular programming. Home shopping did not exist on over-the-air television until after the Commission abandoned the commercial limits in 1984.<sup>11</sup> But today, home shopping is a \$2.2 billion industry.<sup>12</sup> Though there may be some benefit in allowing a limited amount of home shopping for people who cannot leave their homes to shop, as the Commission stated in its Report and Order in MM Docket No. 93-8,<sup>13</sup> that need can be met by cable or by more limited quantities on broadcast television. There is no need for licensees to use the public airwaves to broadcast home shopping for 55 minutes out of every hour of every day.

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<sup>11</sup>Peter Carlin, The Jackpot in Television's Future, N.Y. Times, Feb. 28, 1993 § 6 (Magazine), at 38.

<sup>12</sup>The Home Shopping Network's history is representative of the home shopping industry as a whole. Its annual sales for 1986 were \$160 million; these increased to \$730 million in 1988; and were reported as exceeding \$1 billion in 1991. Id. at 38.

<sup>13</sup>Report & Order in MM Docket No. 93-8 (Home Shopping Stations), 8 FCC R. 5321 (1993), petition for reconsideration pending. CSC has petitioned for reconsideration of the home shopping decision, and will not repeat its arguments here, but wishes to incorporate them by reference.

Infomercials are another form of advertising that compete with programming for broadcast time.<sup>14</sup> Infomercials are typically "long-form," or "program-length" advertisements, usually taking up 30 minutes of broadcast time.<sup>15</sup> This form of advertising has gained wide acceptance in the broadcast industry since the 1984 deregulation, with nine out of ten broadcast stations currently accepting infomercials, and 50% of broadcast stations airing more infomercials now than they did in 1990.<sup>16</sup> Traditionally, infomercials had been slotted in late night time slots, and this positioning further reduced time devoted to news, public affairs and other valuable programming relegated to off-peak time periods. Now these half-hour-long advertisements are even pushing aside programming in times of high viewership, as 25% of television stations air infomercials in daytime, while 15% air infomercials in prime time.<sup>17</sup>

## **2. Spot Commercials and Promotionals Are Also Increasing.**

Another response to the repeal of commercial limits has been an increase in the time devoted to traditional spot commercials,

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<sup>14</sup>See generally Infomercial Petition, supra note 1.

<sup>15</sup>Christopher Stern, The Sweet Buy and Buy, Broadcasting & Cable, Oct. 25, 1993, at 20.

<sup>16</sup>Steve McClellan, Broadcasters, Cable: The Airing of the Green, Broadcasting & Cable, Oct. 25, 1993, at 24.

<sup>17</sup>Id. And now, one broadcast network intends to use more broadcast time running advertisements for these advertisements, telling viewers when infomercials are being broadcast and suggesting that they tape the infomercials. Kevin Goldman, CBS to Push Videotaping of Infomercials, Wall St. J., Nov. 15, 1993, at B8.

that is, time sold in typically thirty second increments for the purpose of selling a product. We have also witnessed an increase in station and network self-promotions. For example, it has become common for stations to promote entertainment shows on local news programs. These plugs add to the excess of commercial material presently on television and take away time that could be used for serious news stories. Because presumably no consideration is paid for these types of promotions, they have fallen outside of the Commission's traditional realm. The Commission should examine the amount of self-promotional spots and announcements broadcast by licensees and consider how it could address this problem.

In sum, the repeal of commercial limits has lead to an increase in traditional advertising and station self-promotions, as well as the development of new forms of advertising, such as infomercials and home shopping, that have supplanted regular programming. The result of this excessive amount of commercial material is that less air time is available for broadcasting programming that informing the electorates, discusses controversial issues, presents diverse viewpoints, addresses local issues, and educates and informs children and adults.

**B. Some New Forms Of Advertising On Broadcast Television Deceive Viewers And Add To The Excess Of Commercials.**

Many of the types of advertising that have developed since deregulation deceive and confuse consumers. For example, infomercials that mimic traditional television formats, such as

talk shows and news programs, are deceptive to viewers.<sup>18</sup> Absent a continuous disclaimer, as suggested by CSC et al.'s Infomercial Petition,<sup>19</sup> viewers who tune in after the beginning are likely to be unaware that the program they are watching is in fact a commercial. A recent infomercial by Bell Atlantic used a situation comedy format, including main characters, a storyline, and even a theme song to sell telephone services being used by the characters.<sup>20</sup> Without a continuous warning to the viewers as to the program's commercial nature, the Bell Atlantic "sitcommercial" could easily be mistaken for regular programming.

The same ad agency that created the "The Ringers" for Bell Atlantic has created a "documercial" for Tums.<sup>21</sup> This half-hour program about the importance of calcium for women is being pitched to stations to run as a regular program in which the stations can sell ads. Nothing will be sold on the program itself, but Tums will run ads promoting its antacid as a way to add calcium to the diet. Without adequate disclosure, television viewers will think they are watching a program designed to impart

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<sup>18</sup>The content of some infomercials is also deceptive. For example, infomercials have promoted promoting products falsely claimed to cure baldness, impotence, and cancer. Stern, supra note 16, at 23-24.

<sup>19</sup>Infomercials Petition, supra note 1.

<sup>20</sup>Laura Bird, Latest Infomercial: The Situation Comedy, Wall St. J., Nov. 6, 1992, at B14.

<sup>21</sup>Melanie Wells, Tums to Offer Half-hour Calcium "Documercial", Advertising Age, Nov. 15, 1993, at 12.

important medical information instead of a program produced by the manufacturers of Tums to boost sales of Tums with calcium.

The increasing difficulty viewers face in trying to discern advertising from other programming is exacerbated by commercials which blur with other types of programs. For example, NYNEX recently announced its hiring of CNN broadcast journalist Mary Alice Williams to pitch its services,<sup>22</sup> raising the possibility of deceiving viewers who believe Ms. Williams is still in her newscaster role. The deceptive nature of the above examples could be eliminated by requiring prominent disclaimers requested in the Infomercial Petition.<sup>23</sup>

Undisclosed product placements are another form of deceptive advertising on the increase since deregulation. Companies now exist solely to place products strategically in movies,<sup>24</sup> and on television shows.<sup>25</sup> Product placements are deceptive because the viewers are never warned that they are watching paid

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<sup>22</sup>Stuart Elliott, A Newscaster-Turned-Spokeswoman Raises Issues of Credibility, N.Y. Times, Dec. 2, 1993, at D21.

<sup>23</sup>Infomercial Petition, supra note 1.

<sup>24</sup>Petition To Amend The Television Sponsorship Identification Rules By Rescinding The Waiver Of Identification Requirements With Respect To Feature Motion Picture Films Produced Initially & Primarily For Theater Exhibition, (Motion Picture Petition), filed by Center for Science in the Public Interest, the National Council on Alcoholism, Doctors Ought to Care, Inc., Kathryn C. Montgomery, Ph.D., and Siva K. Balasubramanian, Ph.D., Mar. 29, 1989, at 15-16. This petition asks the FCC to apply the sponsorship identification rules to motion pictures rebroadcast on television stations in the same way these rules are applied to other broadcast programs.

<sup>25</sup>Richard Mahler, Products Play Central Role in TV Series, Electronic Media, Jan. 21, 1991, at 40.

advertisements for these products, and viewers' defenses against ads are down while they are engrossed in watching television programs.

No disclosure is required for sponsors who pay to have their products placed in motion pictures.<sup>26</sup> When such motion pictures are later rebroadcast on television, sponsorship identification would be required but for an exception to the general sponsorship identification rule granted in 1963.<sup>27</sup> At that time, the Commission found no evidence that advertisers were paying consideration for the favorable use of their products.<sup>28</sup> As detailed in the Motion Picture Petition, this is no longer true.<sup>29</sup> Today, product placement is a lucrative business in the movie industry.<sup>30</sup> The Commission should act to ensure that the viewing public is aware of this type of advertising.

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<sup>26</sup>Last year, the Federal Trade Commission denied CSC's Complaint & Request for Investigation & Rulemaking Concerning Unfair & Deceptive Practices in the Placement of Advertisements in Motion Pictures, in which the commenters and others asked the FTC to monitor and restrict the deceptive practice of advertising via product placement in movies. December 11, 1992, Letter from Donald S. Clark to Michael F. Jacobson.

<sup>27</sup>47 C.F.R. §§ 73.1212(h), 76.221(g).

<sup>28</sup>Amendment of Sponsorship Identification Rules, 34 FCC 829, 841 (1963).

<sup>29</sup>Motion Picture Petition, supra note 1.

<sup>30</sup>Recently, Taco Bell received a prominent placement in the movie "Demolition Man" in return for promoting the movie. Nisid Hajari, Macho Nachos, Ent. Weekly, Oct. 29, 1993, at 7. Another recent example is the use of Red Stripe beer in "The Firm." Red Stripe gave \$5000 in beer to the film crew for that placement. Laura Bird, A Star is Brewed as Obscure Beer Scores with Role in Hit Movie, Wall St. J., July 8, 1993, at B6.

Adequate disclosure is often not made for products donated for use in television shows.<sup>31</sup> This trend was documented in the OC/UCC Petition filed in January 1989.<sup>32</sup> Other examples of undisclosed product endorsements include the use of Pontiac Firebird cars in "Knight Rider," Cadillac's Alanti on "Married With Children,"<sup>33</sup> Rolling Rock beer in "thirty-something" and Nintendo video games on "Growing Pains."<sup>34</sup>

Like undisclosed product placements, advertising in sporting events is even more insidious than blatant advertising because viewers are not warned that companies are attempting to target them. In 1991, 4,200 companies spent nearly \$3 billion to sponsor special sporting events, including the Olympics, the Virginia Slims Tournament,<sup>35</sup> and college football bowl games like

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<sup>31</sup>Mahler, supra note 25; Douglas C. McGill, Questions Raised on "Product Placements", N.Y. Times, Apr. 13, 1989, at D18.

<sup>32</sup>Supra note 1.

<sup>33</sup>Mahler, supra note 25. This article also describes the practice of cross-promotion. For example, a child actor on ABC's "Full House" wore a "Tiny Toon Adventures" t-shirt. Both are made by Warner Bros. affiliates. As more and more media companies merge, we can expect to see more of this type of intra-corporate promotions.

<sup>34</sup>David Hajdu, Why the "Cheers" Gang Switched to Stroh's Beer, TV Guide, July 30, 1988, at 31.

<sup>35</sup>In connection with the Virginia Slims Tennis Tournament, the Department of Justice, the agency responsible for enforcement of the Cigarette Labeling and Advertising Act, has advised television stations that "the use, during a sporting event, of materials on which the name of a cigarette is printed in a manner that makes it visible when a sporting event is broadcast or transmitted, constitutes advertising." Letter from Margaret A. Cotter, Asst. Dir., Office of Consumer Litigation, Civil Div., to Winthrop Baker, Pres. and Gen. Mgr. WNEV-Television (Mar. 11, 1983). CSC et al. believe it reasonable for the FCC to follow

the Blockbuster Bowl.<sup>36</sup> Boxing matches are also aired in which the floor mat and ring posts carry corporate logos. All of these events being shown on broadcast stations allow companies indirectly to advertise their brand names to consumers, and serve to add to the excess that is being broadcast to deceive viewers.

Viewers are deceived by the excessive amount and confusing types of commercials which currently exist. The Commission should examine this problem and eliminate, as much as possible, such deceptive advertising.

**C. The Heavy Volume of Advertising Has Harmful Effects on Viewers and the Society at Large.**

Perhaps the most important concern regarding excessive commercialism is the cumulative impact of the advertising itself on the way viewers think and behave, aside from whether they will buy a particular advertised product. While any amount of advertising could affect viewers, the more advertising there is, the greater would be any effect. Clearly, there is no single point at which acceptable turns into excessive, but we believe that current levels have significant effects that deserve careful scrutiny and remedial action.

Spot Advertising currently takes up approximately one-fourth of the broadcast hour. In addition, are the numerous program-length commercials, infomercials, product placements, and other commercial matter. Thus, a viewer watching an average of 3 hours

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the same approach.

<sup>36</sup>Deborah Baldwin, Read This, Common Cause Mag., May/June 1991, at 33.

of television a day could easily see one hour of advertising. In other words, roughly one sixteenth's of that viewer's waking hours would be consumed by the watching of messages designed to persuade the viewer to spend money and time purchasing one or another product. That is far more time than most people spend on other activities except for eating and going to work or school. As John Waide, a philosopher at Christian Brothers College in Memphis, Tennessee, points out:

The quibbles over which beer, soft drink, or auto to buy are less important than the overall message. Each product contributes its few minutes each day, but we are bombarded for hours with the message that friends, lovers, acceptance, excitement, and power are to be gained by purchases in the marketplace, not by developing personal relationships, virtues, and skills.<sup>37</sup>

The flood of promotional messages to which viewers are exposed vastly outweighs messages that encourage non-commercial activities, such as supporting non-profit organizations, volunteering with community organizations, making personal sacrifices on behalf of the general community welfare, sharing material possessions, cooperating with friends and neighbors, being thrifty, and a whole raft of other activities that would benefit the individual and the community. Notwithstanding an occasional public-service message, the variety of persuasive messages falls within a narrow -- commercial -- range.

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<sup>37</sup>The Making of Self and World in Advertising, 6 J. Business Ethics 73-79 (1987).

Commercialism encourages people to be concerned with purchasing as many goods and services as possible. Carried to excessive levels, commercials contribute to greater pollution and environmental degradation; personal financial difficulties; health problems related to excessive drinking, smoking, and poor diet; and disinterest in government and society at large.

Over-the-air broadcasting has been established under the Communications Act with unique privileges, including monopoly use of scarce frequencies and must-carry protection. In exchange for these valuable privileges, broadcasters have been expected to adhere to higher standards, often at some financial cost. The duty to serve all segments of the community and provide programming that educates and informs children are but a few examples of the requirements that have been imposed. Just as Title III of the Communications Act maintains over-the-air broadcasting as a preserve where viewers know that higher standards are maintained, it is not unreasonable for the FCC to consider whether it should reestablish protections against excessive commercialism so that the public can confidently turn to one medium of communications which is not beset with the influence of rampant commercialization.

**D. Advertiser Control Over Programming Undermines Program Integrity.**

Where the quantity of advertising is unregulated, product marketers have come to exert a great deal of control over program content outside of their own commercials. Thus, the integrity of

news, public affairs and even entertainment programming has become compromised.

Many examples exist of TV stations being forced to censor stories critical of major advertisers. The Seattle station KIRO-TV's Herb Weisbaum wrote in 1990 about stories being watered down, not aired, or not even attempted due to advertiser pressure. However, Weisbaum in 1991 declined to comment on this statement because "[m]anagement ha[d] decided that [he] should no longer speak about this."<sup>38</sup> Local car dealerships, which can contribute 30 to 40% of a station's ad revenues, attempt to control unfavorable stories in a variety of ways, including threatening reporters, having reporters fired, and acting in concert with other car dealers to pull ads.<sup>39</sup> A consumer reporter for "Good Morning America" said, "Absolutely innocuous stories, like those on how to buy a car, can bring on big trouble."<sup>40</sup>

Indeed, the head of one of the commenting parties personally experienced censorship due to advertising pressure. In February 1992, Michael Jacobson, co-founder of CSC, was to appear on KKTU-TV "Noon News" in Colorado Springs, Colorado to talk about the health problems with fast food.<sup>41</sup> The producer insisted on

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<sup>38</sup>Sam Hussein, Sponsors Put Brakes on Consumer Reporting, Extra, July/Aug., 1991, at 18.

<sup>39</sup>Id.

<sup>40</sup>Id.

<sup>41</sup>Ronald K.L. Collins, Dictating Content: How Advertising Pressure Can Corrupt A Free Press 53 (1992).

removing all labels depicting brand names of the fast food, and asked that Jacobson not mention any brand names on the air.<sup>42</sup> The producer removed the labels because several years earlier the station had run a similar story in which McDonald's was criticized, and in retaliation for the negative depiction of its products, McDonald's pulled all advertising for three months.<sup>43</sup>

Because excess advertising on broadcast stations undermines the integrity of the programming, the FCC should study the effects of undue advertiser pressure on licensees, and should require record-keeping documenting how stations handle such pressure.

**E. Excessive Commercialism, In The Form Of Programs Based On Products, Harms Child Viewers.**

While the present proceeding does not inquire specifically about the issue of commercialization in children's programming, the Commission should also consider whether its rules and policies governing advertising on children's programs, and particularly its definition of program length commercials ("PLCs"), have been effective. The issue of the commercialization of children's program content traces back to the late 1960s, when the FCC first ruled that "Hot Wheels," an ABC Saturday morning program, was developed in large part to

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<sup>42</sup>Id.

<sup>43</sup>Id.

accomplish the promotion of toy products to child-viewers.<sup>44</sup> The Commission then ruled that:

We find this pattern disturbing; more disturbing than the question of whether the commercial time logged is adequate. For this pattern subordinates programing in the interest of the public to programing in the interest of its saleability.<sup>45</sup>

After making clear the Commission's judgment that the "Hot Wheels" program was substantially commercial in nature, and that therefore some proportion of the program time would have to be logged as commercial matter, the show was withdrawn from ABC's schedule before any further regulatory action could be accomplished. This set a precedent that was later expanded in the FCC's subsequent policy prohibiting program-length commercials directed to any audience, not merely children.<sup>46</sup> That policy was buttressed further still in the 1974 Children's Television Report and Policy Statement, which determined that PLCs directed to child audiences were contrary to the public interest because of children's inherent difficulties at discriminating program from commercial content.<sup>47</sup> At this point, the Commission defined a program-length commercial as:

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<sup>44</sup>In Re Topper Corp., 21 FCC 2d 148 (1969), reaffirmed sub. nom. American Broadcasting Companies, Inc., 23 FCC 2d 132 (1970), 23 FCC 2d 134 (1970).

<sup>45</sup>In Re Topper, 21 FCC 2d at 149.

<sup>46</sup>Program-Length Commercials, 39 FCC 2d 1062 (1973); Applicability of Commission Policies On Program-Length Commercials, 44 FCC 2d 985 (1974).

<sup>47</sup>Children's Television Report & Policy Statement, 50 FCC 2d 1, 11, 17-18 (1974), recons. denied, 55 FCC 2d 691 (1975), aff'd, ACT v. FCC, 564 F.2d 458 (D.C. Cir. 1977).

[P]rogram matter which is designed primarily to promote the sale of a sponsor's product or services, rather than to serve the public by either entertaining or informing it.<sup>48</sup>

This policy effectively restrained commercialization within the body of children's television programming until 1984, when the Commission abandoned all advertising limits--including children's advertising--in deference to marketplace forces.<sup>49</sup> Once restrictions were lifted on children's program-length commercials, this format quickly came to predominate all aspects of programming directed to children on commercial television stations.<sup>50</sup> Indeed, by 1987, only three years after deregulation, there were at least 50 such toy-based children's shows being broadcast.<sup>51</sup>

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<sup>48</sup>Applicability Of Commission Policies On Program-Length Commercials, 44 FCC 2d.

<sup>49</sup>Prior to deregulation of the restriction on children's PLCs, few programs ventured near the boundaries that were prohibited in this area. The policy was never challenged, nor was it the source of any controversy. Moreover, it was widely regarded as effective in accomplishing its intended goal of limiting commercialization within children's programming. While some program themes and characters were eventually licensed and marketed to children, such efforts were limited and only occurred subsequent to the development of a program's popularity. No pattern existed of programs entering the marketplace accompanied simultaneously by licensed products, as has become common today. When the PLC restriction was in effect, decisions about what programs to air for children were reached by broadcasters on the basis of a program's merit for child audiences, independent of its potential for product promotion.

<sup>50</sup>Dale Kunkel, From a Raised Eyebrow to a Turned Back: The FCC & Children's Product-Related Programming, 38 J. Comm. 90, 99-100 (1988).

<sup>51</sup>Jane Hall, TV's New Toys Send Critics Scrambling for Their Guns, People, Mar. 17, 1987, at 41.

Toy producers recognized the tremendous promotional potential of building shows around their products, and were able to create programs that accomplished their marketing goals while at the same time presenting content that was attractive and entertaining for children. While this development served both the needs of toy producers as well as broadcasters, it did not serve the needs of children.<sup>52</sup>

Ultimately, in response to a court remand<sup>53</sup> and an act of Congress,<sup>54</sup> the Commission reinstated rules against PLCs directed at children. In reinstating regulation in this realm, however, the Commission has failed to accomplish its compelling interest

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<sup>52</sup>Young children lack the cognitive ability to discriminate commercial from program content, which renders them particularly vulnerable to commercial persuasion. Dale Kunkel & Donald Roberts, Young Minds & Marketplace Values: Issues in Children's Television Advertising, 47 J. Soc. Issues 57, 60 (1991). The interweaving of commercial content within children's programming thus takes unfair advantage of young children, a position the Commission has affirmed in its recent decision to reestablish a restriction on program-length commercials targeting children. Policies & Rules Concerning Children's Television Programming; Revision Of Programming & Commercialization Policies, Ascertainment Requirements, & Program Log Requirements For commercial Television Stations, 6 FCC Rcd 2111, 2117 (1991) (Children's Television Order); Policies & Rules Concerning Children's Television Programming; Revision Of Programming & Commercialization Policies, Ascertainment Requirements, & Program Log Requirements For commercial Television Stations, 6 FCC Rcd 5093, 5099 (1991) (Children's Television Reconsideration Order).

<sup>53</sup>ACT v. FCC, 821 F.2d 741 (D.C. Cir. 1987). As the Court of Appeals noted in its remand of the FCC's deregulation of its children's advertising policies, however, "[f]or almost 15 years, the FCC's regulation of children's television was founded on the premise that the television marketplace *does not* function adequately when children make up the audience," (emphasis in original). Id. at 746.

<sup>54</sup>Children's Television Act of 1990, 47 U.S.C. § 303a.